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No. 546

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL NO. 878; ODELL SMITH AND JIMMY HARRISON ..... *Petitioners*

v.

M. E. BLASSINGAME AND RALPH ROYSE ..... *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

TOM GENTRY,
Counsel for Petitioners,
P. O. Box 2317,
Little Rock, Arkansas.

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v.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

The petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Arkansas entered in this case on June 25, 1956.

CITATIONS TO OPINIONS BELOW

The memorandum opinion of the Chancellor of the Chancery Court of Pulaski County, Arkansas, Second Division, (R. 17-21) is unreported and is Appendix A hereto, *infra*, p. 18. The opinion of the Supreme Court of Arkansas (R. 42-45) is at this time unreported in any official report and is printed in Appendix B hereto, *infra*, p. 23. The dissenting opinion (R. 46-49) is at this time unreported in any official report, and is printed in Appendix C hereto, *infra*, p. 29.

JURISDICTION

The judgment of the Supreme Court of Arkansas was entered on June 25, 1956 (R. 42-45); p. 23, *infra*. A timely petition for rehearing was filed on July 11, 1956 (R. 50-51), and was denied on October 1, 1956 (R. 52). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3), in that a right is specially set up or claimed under the Constitution of the United States.

STATEMENT

Some of the members of the petitioner, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 878, were involved in a labor dispute with their employer, Terry Dairy Products Company, Inc., over wages, hours and working conditions. The plant of the Terry Dairy Products Company, Inc., was being picketed by these employees.

The dairy company purchases milk from the dairy farmers, processes it, and sells such milk and other dairy products at wholesale prices to various independent retail outlets such as cafes, restaurants and grocery stores. These retail outlets in turn sell these dairy products at retail prices to the general public patronizing such establishments.

The respondent, M. E. Blassingame, at the time this action was filed, operated such a retail establishment, but at the time of the trial he had sold his business and the action was continued by the intervener, Ralph Royse, who also operated an independent cafe selling at retail prices the dairy products which he obtained from Terry Dairy Products Company, Inc.

In an effort to persuade the public not to purchase the dairy products of Terry Dairy

Products Company, Inc., the union sought to advertise its grievance against the dairy company at the entrances of the retail outlets above mentioned. This advertising was done by a man carrying a sign in front of these retail outlets which read:

> "Employees of Terry Dairy Products Company on strike for a living wage. This establishment serves Terry Dairy milk. Please don't drink it."

These so-called pickets appeared in front of the cafe owned and operated by Mr. Royse, and in front of the other such independent outlets. When these so-called pickets appeared in front of the retail outlets, the respondents applied to the Chancery Court of Pulaski County for an injunction on behalf of themselves and all other such outlets similarly situated, to prohibit petitioners from standing or walking in front of the respondents' places of business carrying the aforementioned signs.

Without the formality of a hearing, the Chancery Court of Pulaski County granted a temporary injunction prohibiting these so-called pickets from advertising their grievance against Terry Dairy Products Company, Inc., in front of the places of business of the respondents.

The union and the employees of Terry Dairy Products Company, Inc., had no grievance against any of the respondents, and none of the employees of the respondents belong to Local Union 878.

The activity of these so-called pickets was entirely peaceful in every respect. No person attempted to stop or block anyone from going into the places of business of the respondents, nor did anyone ask any of the general public not to patronize the respondents' establishments, nor was anyone who patronized respondents' establishments criticized for so doing; no words, gestures, intimations or the like were used to encourage the general public not to trade with the respondents. The so-called pickets merely stood or walked in the general vicinity of the entrances to the places of business of the respondents with the above mentioned sign advising the general public that the respondents sold the products of the Terry Dairy Products Company, Inc., against whom they were on strike, and asked the general public to please not drink Terry Dairy milk. There was only one so-called picket at each such retail outlet.

The petitioners, in answer to the complaint filed by the respondents in the Chancery Court of Pulaski County, stated that their right to advertise peacefully and truthfully their griev-

ance against their employer, Terry Dairy Products Company, Inc., is guaranteed to them under their right of freedom of speech, pursuant to the First and Fourteenth Amendments to the Constitution of the United States.

The Chancery Court of Pulaski County, after a final hearing, made the injunction against the so-called pickets permanent, and passed upon this constitutional question by stating in paragraph 9 of its decree as follows:

> "That the alleged right of the defendants to advertise their strike may not be exercised in such a manner as to violate the rights of the plaintiff, the intervener, and others similarly situated, which rights are of equal dignity with the freedom of speech rights asserted by the defendants."

After the adverse decision by the Chancery Court of Pulaski County, this matter was appealed to the Supreme Court of Arkansas, wherein it was argued again that these petitioners' rights to advertise their grievance to the general public is guaranteed to them under their rights of freedom of speech pursuant to the First and Fourteenth Amendments to the Constitution of the United States. The Supreme Court of Arkansas in a split decision affirmed the injunction issued by the Chancery

Court of Pulaski County, and in its opinion upon this matter stated as follows:

> "The Supreme Court of the United States has held that state courts are given the right to determine public policy and to 'set the limits of permissible contest open to industrial combatants.' "

This federal question was urged again upon the Supreme Court of Arkansas in the petition for rehearing filed in this matter, wherein it was stated:

> "The peaceful picketing in this case fell within the constitutional guaranties of freedom of speech as set forth in the First and Fourteenth Amendments to the Constitution of the United States. While it is true that a state may determine the public policy and set the limits of permissible contests open to industrial combatants, such policy determination, whether by a court or by a legislative body, is still governed by the Constitution of the United States, and such policy must not be a violation of the Constitution of the United States."

On October 1, 1956, the Supreme Court of Arkansas, without further opinion, denied this petition for rehearing.

QUESTION PRESENTED

Under the freedom of speech guaranties of the First and Fourteenth Amendments to the Constitution of the United States, may a state court prohibit the members of a union from advertising their grievance against an employer when such advertising is done in a truthful and peaceful manner by means of a person carrying a sign in front of a retail outlet of the product of the employer, which sign only asks the general public not to use the product of the employer and does not ask the general public to cease doing business with the owner of the retail outlet, and where no demand or request is made upon the retail outlet to cease doing business with the employer?

REASONS FOR GRANTING THE WRIT

1. The decision of the Supreme Court of Arkansas in the instant case is apparently in direct conflict with the decision of this Court in the case of *Bakery Drivers* v. *Wohl*, 315 U. S. 769, wherein this Court held that the union's right "to make known their legitimate grievances to the public whose patronage was sustaining the peddler system" was protected by the freedom of speech guaranties of the Constitution of the United States.

In the case of *Milk Wagon Drivers* v. *Meadowmoor Dairies,* 312 U. S. 278, this Court declared, "Peaceful picketing is the workingman's means of communication." Frequently this Court has said that the right to free discussion is a right to be guarded with a jealous eye, and in *A. F. of L.* v. *Swing,* 312 U. S. 321, also stated:

> "Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interest, can no more be barred because of the concern for economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's case."

The petitioners were attempting to publicize their grievances against Terry Dairy Products Company, Inc., in a truthful, peaceful manner, and by "peaceful persuasion disentangled from violence" make known their side of the conflict and enlist the aid of the general public.

The general public was advised of the strike, and asked not to drink Terry Dairy milk. The public was not asked to refrain from doing business with the respondents, and no request or demand was made upon the respondents that they refrain from offering for

sale Terry Dairy milk. No demand or request was made upon the employees of the respondents, and as stated in the *Swing* case, *supra*:

> ". . . A state cannot exclude working men from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him."

The petitioners were not engaged in a secondary boycott under any definition of that term as announced by this Court or other recognized authority. No demand of any kind was made upon these respondents, and petitioners are not pressing any objective against them either primary or secondary. The petitioners were advertising their grievance against Terry Dairy Products Company, Inc., on the public streets adjacent to the retail outlets of the Terry Dairy products, and at no time was any demand made upon the public not to buy Terry Dairy products.

A "secondary boycott" is a term applied to the situation where coercive pressure is placed upon a customer (with whom no dispute exists) of an employer (with whom there exists a dispute) to withhold the customer's patronage through fear of damage to him. *Duplex*

Printing Press Co. v. *Deering*, 254 U. S. 443, p. 466; *Truax* v. *Corrigan*, 257 U. S. 312, p. 330. Therefore, in order for a "secondary boycott" to be in existence in the instant case, there must be coercive pressure directed against the respondents, the object of which is to force the respondents to stop doing business with Terry Dairy Products Company, Inc.

Even the majority opinion of the Supreme Court of Arkansas stated:

> "In an effort to persuade the public not to purchase the products of the Terry Dairy Company, appellants placed pickets at the entrances of some of the retail establishments, including that of Royse, selling Terry products."

Here, even the court below acknowledged that none of the elements which constitute a secondary boycott are present.

Here the so-called picketing was not directed against the respondents, but was directed against Terry Dairy Products Company, Inc., with whom the labor dispute existed, and the product which Terry Dairy Products Company, Inc., produced. Consequently, no "secondary boycott" within the ordinary meaning of this term is present.

There are several factors which militate against the activities of these petitioners being a secondary boycott: *first*, the union is not interested in obtaining anything from the respondents and has made no demands upon them; *second*, the so-called picketing may not be construed to constitute a demand upon the respondents since the sign carried by the so-called picket clearly pointed out that the union was merely asking the general public not to drink Terry Dairy milk; *third*, the public was not asked to stop doing business with the respondents, but was asked only to stop buying Terry Dairy milk. The petitioners had no objection to customers spending the money which they intended to spend for Terry Dairy milk for other brands of milk, or for other drinks or items at the respondents' places of business. The activities of the petitioners were an integral part of the campaign to enlist the public support in a campaign in which both adversaries to this labor dispute were engaged. Whatever anyone may do after reading the sign he does of his own free individual will, based upon fair persuasion; not because he is compelled or enters into any concerted plan with the petitioners.

The effect of the decision of the Supreme Court of Arkansas in the instant case is to say that petitioners may advertise their grievance

against their employer in a peaceful and truthful manner in some out of the way place where the products of the Terry Dairy Products Company, Inc., are not sold, or in some place where an appeal to the general public would not be seen.

Freedom of speech is just as much abridged by saying that a person may not exercise that freedom if he is heard as it would be to prohibit free speech entirely. These petitioners were soliciting support for their cause near the places where they were most likely to obtain the most effective support for their side of the economic question — among the customers of the retail outlets of Terry Dairy products. To deny petitioners the right to solicit support from among these customers or prospective customers of the retail outlets is to deny them the freedom of speech guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States.

Many state courts have squarely met this question and have ruled that this so-called picketing of the product for such a purpose is protected by the freedom of speech guaranties of the Constitution of the United States. Some of these cases are *Goldfinger* v. *Feintuch*, 276 N. Y. 281, 11 N. E. 2d 910; *Mason & Dixon Lines, Inc.* v. *Odom*, 18 S. E. 2d 841 (Ga.); *Alliance Auto Service* v. *Cohen*, 19 A. 2d 152 (Pa.); *Ellingsen*

v. *Milk Wagon Drivers Union*, 35 N. E. 2d 349 (Ill.); *Englander Co.* v. *Tishler Co.*, 280 App. Div. 217, 112 N. Y. 2d 611; *Fortenbury* v. *Superior Court*, 106 P. 2d 411 (Calif.); *Ohio Valley Advertising Corporation* v. *Local* 207, 76 S. E. 2d 113 (W. Va.); *Galler* v. *Slurzberg*, 99 A. 2d 164 (N. J.). In the *Fortenbury* case, *supra*, the highest court of California stated:

> "One who sells a product of a merchant or manufacturer who is engaged in a labor dispute with his employees, inescapably becomes an ally of the employer. He has a direct unity of interest with the one being struck. By providing an outlet for that product, he enables the employer to maintain the working conditions against which labor is protesting. And unless the union is allowed to follow the product to the place where it is sold and ask the public by peaceful representations to refrain from purchasing it, the workers have no real opportunity to tell their story to those whose interest or lack of interest will, in large measure, determine the issues in dispute."

In the *Galler* case, *supra*, the highest court of New Jersey stated:

> "We have here a form of secondary picketing known as product picketing — picketing directed against the product it-

> self and not against the person selling it. Peaceful picketing of the place of business of a merchant selling the product of a manufacturer who is a party to a labor dispute, for the purpose of asking the public to refrain from purchasing such product, is permissible."

The decision of the Supreme Court of Arkansas in this matter is clearly against the great weight of authority upon this question.

2. The question presented here is of importance not only to the petitioners who have been deprived of their constitutional guaranties, but also to the many Arkansas working men in the future who will be deprived of their right to enlist support for their cause because of the decision of the Supreme Court of Arkansas.

These petitioners were protesting the low wages and sub-standard working conditions under which they were working. They were endeavoring to lift their standard of living and the standard of living of their families. These people began their daily work at 2:30 or 3:00 o'clock in the morning. They were not covered by the Fair Labor Standards Act, and the only way that they could improve their lot in life was through organization and collective bargaining. Many of these people had recently been subject to the evils of the sharecropping

system of farming, and they had migrated to this industry because it is so closely connected with the farm, and as a result of their extremely low income they were without funds to place newspaper ads in the daily papers asking the people not to drink Terry Dairy milk, or to use any of the other expensive media of communicating their side of this labor question.

These people unquestionably have the right to communicate their side of this labor dispute, and the only means which they had at their command to do so was to have simple signs printed asking the prospective ultimate consumer of this milk not to drink it. Of course they were asking the general public not to drink this milk because that is the only weapon that a working man has at his command in such a dispute as this.

This activity has been afforded the workers in New York, California, and elsewhere, and it is our contention that these people in Arkansas are equally protected in their right of freedom of speech under the Constitution of the United States of America.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

TOM GENTRY,
Counsel for Petitioners.

APPENDIX A

In the Chancery Court of Pulaski County, Arkansas

M. E. BLASSINGAME, AN INDIVIDUAL, D/B/A PETE'S DRIVE INN, INDIVIDUALLY AND AS REPRESENTATIVE OF ALL OTHERS SIMILARLY SITUATED ..... *Plaintiff*

v. No. 102782

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL NO. 878; ODELL SMITH, ET AL ..... *Defendants*

RALPH ROYSE ..... *Intervener*

DECREE

On this 14th day of December, 1955, the above cause comes on for final hearing, and the plaintiff and the intervener being present in person and by their solicitors, Catlett & Henderson, and the defendants appearing by their solicitor, Tom Gentry, and the court, having heard the evidence taken ore tenus at the bar of the court and having heard argument of counsel, and being well and sufficiently advised on all matters of fact and of law, finds:

1. That the defendant union, acting by and through its members and agents, did picket the place of business of the plaintiff and the place of business of the intervener. That at and before the time of said picketing no labor dispute existed between the plaintiff and the defendant union or between the intervener and the defendant union, and that said picketing was carried on and conducted for the sole purpose of intimidating the plaintiff, the intervener, and others similarly situated, and coercing them to discontinue the sale of products manufactured and distributed by Terry Dairy Products Company, Inc.

2. No dispute exists between the plaintiff and his employees or between the intervener and his employees.

3. That the plaintiff, the intervener, and others similarly situated have no financial interest in Terry Dairy Products Company, Inc., and no interest of any other kind. That said parties are not agents of Terry Dairy Products Company, Inc., or acting for or in its behalf, but merely occupy the position of customers of Terry Dairy Products Company, Inc.

4. That this court has jurisdiction over the parties and the subject-matter, and that exclusive jurisdiction has not been delegated by Act

of Congress on the National Labor Relations Board.

5. That the plaintiff, the intervener, and others similarly situated have been injured by the picketing conducted by the defendant union, its members, agents, employees, and/or others acting in concert with it, in that, as a result of said picketing, said parties have lost customers.

6. That said picketing constitutes a secondary boycott and is contrary to public policy of the State of Arkansas and is a violation of the property rights of the plaintiff, the intervener, and others similarly situated.

7. That the plaintiff, the intervener, and others similarly situated are neutrals in an alleged labor dispute between the defendant union and Terry Dairy Products Company, Inc., and that the acts of the defendant union, its officers, members, agents, servants, employees, and others acting in concert with it, violate the freedom of plaintiff, the intervener, and others similarly situated, and violate their right to operate their respective businesses free from dictation and interference.

8. That the asserted right of the defendants to advertise their strike against Terry Dairy Products Company, Inc., was exercised not for the purpose of advertising its strike, but for

the purpose of exerting economic pressure against the plaintiff, the intervener, and others similarly situated, in an effort to induce said persons to withdraw their patronage from Terry Dairy Products Company, Inc., and that the mere presence of the pickets outside the places of business of the plaintiff, the intervener, and others similarly situated induced a withdrawal of patronage from said places of business.

9. That the alleged right of the defendants to advertise their strike may not be exercised in such manner as to violate the rights of the plaintiff, the intervener, and others similarly situated, which rights are of equal dignity with the freedom of speech right asserted by the defendants.

10. That the plaintiff, M. E. Blassingame, has since the issuance of the temporary injunction herein discontinued the conduct of his business and for said reason the cause of action as to him has become moot and should be dismissed, but that the cause of action alleged in the intervention by intervener, Ralph Royse, on behalf of himself and all others similarly situated is properly before the court.

IT IS, THEREFORE, BY THE COURT ORDERED, ADJUDGED, AND DECREED:

That the defendants, Odell Smith and Jimmie Harrison, individually and as representa-

tives of the class composed of the members of Local Union No. 878 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and their agents, servants, employees, and members, and others acting in concert with them, be and they are hereby permanently enjoined from picketing the place of business of the intervener, Ralph Royse, and from picketing the place or places of business of any other person, firm, or corporation because the intervener or such other person, firm, or corporation offers for sale products manufactured or distributed by Terry Dairy Products Company, Inc., and are further enjoined from otherwise molesting or boycotting the said intervener or others similarly situated for said reason. The plaintiff having discontinued the operation of his business since the issuance of the temporary injunction herein and as to him the case having become moot, the cause of action, insofar as same seeks relief for the plaintiff at his place of business at 802½ Asher Avenue, Little Rock, Arkansas, is dismissed.

That the plaintiff and Central Surety and Insurance Corporation, as surety, be and they hereby are released from the obligation of the bond filed herein on or about June 21, 1955,

pursuant to the temporary restraining order heretofore issued by the court.

Dated this 14th day of December, 1955.

GUY E. WILLIAMS,
Chancellor.

APPENDIX B

Supreme Court of Arkansas

No. 1010

Opinion Delivered June 25, 1956

Appeal from *Pulaski Chancery Court,* Second Division

Affirmed

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL NO. 878; ET AL.....*Appellants*

v.

M. E. BLASSINGAME, ET AL.....*Appellees*

RALPH ROYSE.....*Intervener*

J. SEABORN HOLT, *Associate Justice*

This appeal is from a decree permanently enjoining appellant, International Brotherhood

of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 878, from picketing the retail establishment of intervener, Ralph Royse, and the places of business of all other persons similarly situated.

Material facts appear not to be in dispute. Some of the members of appellant, Local Union 878, were involved in a labor dispute with the Terry Dairy Products Company, Inc., over wages, hours and working conditions. The Terry Dairy Company sold milk and other dairy products at wholesale prices to appellee, M. E. Blassingame (who has gone out of business since the present litigation began), intervener, Ralph Royse, and other retail establishments such as restaurants and cafes which sell these milk products to their customers. In an effort to persuade the public not to purchase the products of the Terry Dairy Company, appellant placed pickets at the entrances of some of the retail establishments, including that of Royse, selling Terry products. These pickets carried a sign which read: "Employees of Terry Dairy Products Co. on strike for a living wage. This establishment serves Terry Dairy milk. Please don't drink it." As indicated, a picket carrying the above sign was placed near the entrance of Blassingame's place of business and also at Royse's place of business. The complaint of Ralph Royse, alleged, in effect, that he

was a wholesale customer of Terry Dairy Products Company, Inc., from which company he purchased dairy products for resale to the public at his place of business, 701 Broadway, Little Rock; that the appellant union, acting through its members, picketed his place of business and thereby deprived him of many of his customers and trade solely because he offered for sale products distributed by Terry Dairy; and that he had no labor dispute with the appellant union. Appellant answered, in effect, denying every material allegation in the complaint, and in addition that the trial court lacked jurisdiction for the reason that the jurisdiction over the subject matter as alleged in the complaint had been preempted by the National Labor Relations Act, as amended (Taft-Hartley Act), U. S. C. Title 29, S. 151, et seq, and that the right to advertise their grievances against Terry Dairy in a peaceful manner was guaranteed under the constitution of the United States, etc., and prayed that the injunction be dissolved. As indicated, the undisputed facts show that Royse had no labor dispute whatever with Local Union 878 above, and that there is no dispute between him and his own employees, none of whom belong to the above union. The picketing is not on the premises at the Terry plant — is entirely disconnected with it, but is on, or near, the premises of the re-

tailer, Royse. It further appears that there was no violence and that the picketing was peaceful.

For reversal appellant relies on two points: "1. Product picketing in a peaceful manner is not picketing for an unlawful purpose, and cannot be enjoined. 2. The evidence does not reflect that appellant is bringing this action for himself and all others similarly situated."

I.

We do not agree with appellant's first contention. We are here confronted with what is obviously, in effect, a secondary boycott — "A secondary boycott occurs when striking employees, in addition to picketing the premises of their own employer, also establish picket lines around the premises of others not so directly interested in the labor dispute, such as customers to whom the primary employer sells or manufacturers from whom he buys," *Boyd* v. *Dodge*, 217 Ark. 919, 234 S. W. 2d 204. There is no proof whatever in this case that the Terry Dairy Company was engaged in interstate commerce, or that a Federal question is involved. Such proof is a primary jurisdictional requisite as was said by the Supreme Court of the United States in *United Construction Workers* v. *Laburnum Construction Corp.*, 98 Law Edition 1025, and this language was used: "It (National

Labor Relations Act, as amended) sought primarily to empower a federal regulatory body, through administrative procedure, to forestall unfair labor practices by anyone in circumstances *affecting interstate commerce.*" In circumstances, in effect, such as are presented here, the public policy of this state as affects picketing by labor unions was declared in the recent case of *International Brotherhood of Electrical Workers, Local Union No. 295* v. *Broadmoor Builders, Inc.*, The Law Reporter, Vol. 99, No. 19, June 27, 1955, p. 675; we there held: "Headnote 1. Labor — Peaceful Picketing, Public Policy. — Picketing — which prevents the delivery of merchandise or other articles to persons or places entirely disconnected from any picketing that might be legal as against the limited person or place to be picketed — declared to be against the public policy of Arkansas." In the Broadmoor Case above, in which we sustained an injunction against picketing, as unlawful, we also pointed out in Footnote No. 7, that the Supreme Court of the United States has held that State Courts are given the right to determine pul lic policy and to "set the limits of permissible contests open to Industrial combatants."

II.

As to appellant's second point, little need be said. The facts showed that pickets were placed at the entrances of not only Blassingame's place and Royse's place, but at other retail establishments, and appellee says: "The plaintiff files this complaint for himself and all others similarly situated, the same constituting a class of citizens who offer Terry products for sale to the public and who are being picketed or are under the threat of picketing by virtue of said fact. It is impracticable to bring all of the members of the class before the court; the filing of separate suits by each of the members of the class would involve a multiplicity of suits . . ." We hold that appellee, Royse, here, was acting not only for himself but for a class and as a member of the class for which he so acted, and that it was proper for him to bring the present suit for the benefit of all. What we said in *Westbrook* v. *McDonald*, 184 Ark. 740, 43 S. W. 2d 356, is in point here. "Where the question is one of a common or general interest of many persons, or where the parties are numerous, and it is impracticable to bring them all before the court within a reasonable time, one or more may sue or defend for the benefit of all. Section 1098, Crawford & Moses' Digest [Now Sec. 27-809 Ark. Stats. 1947]. But the person who so acts for a class

must be a member of the class for whom he acts."

We conclude, therefore, that the decree was correct and we affirm.

Justice McFaddin dissents.

APPENDIX C

Supreme Court of Arkansas

No. 1010

Dissenting Opinion

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL NO. 878; ET AL.....*Appellants*

v.

M. E. BLASSINGAME, ET AL.....*Appellees*

RALPH ROYSE.....*Intervener*

ED. F. MCFADDIN, *Associate Justice*

The appellants were engaged in picketing an establishment where Terry Dairy products were being sold: there was no mass picketing and there was no violence. The majority opinion in this case holds that the Chancery Court was correct in enjoining such picketing on the theory of a secondary boycott. I find

myself unable to agree with that conclusion; hence this dissent.

There is a distinction between (a) a secondary boycott and (b) product picketing. A *secondary boycott* exists when the workmen on strike against one establishment attempt by picketing to induce *the workmen* of another establishment to cease working for their employer.[1] *Product picketing* is an effort by striking workmen of one establishment to persuade *the public* to cease buying the product of the establishment against which the workmen are on strike, but with no effort on the part of the strikers to influence the workmen of the place where the picketing is being conducted to cease from working at that establishment. I think that in the case at bar the picketing was *product picketing* rather than a *secondary boycott*.[2] But I propose to show that the majority opinion is wrong in this case whether the picketing was a *secondary boycott* or *product picketing*.

I. *Secondary Boycott.* If the picketing in the case at bar be regarded as a secondary boycott, then it is my understanding of the Taft-Hartley Act (U. S. C. A. Title 29, Section 158)

[1]See U. S. C. A. Title 29, Section 158, sub (b) (4); and see International Brotherhood v. N. L. R. B., 341 U. S. 694; 95 L. Ed. 1299.

[2]The majority opinion says of Royse's complaint: ". . . that the appellant union, acting through its members, picketed his place of business and thereby deprived him of many of his customers and trade solely because he offered for sale products distributed by Terry Dairy; and that he had no labor dispute with the appellant union."

that all jurisdiction in regard to a secondary boycott — absent mass picketing and violence — is in the National Labor Relations Board. *Capital Service* v. *N. L. R. B.*, 347 U. S. 501, 98 L. Ed. 887, 74 S. Ct. 699. The recent case of *United Auto Workers* v. *Wisconsin Employment Relations Board*, decided by the U. S. Supreme Court on June 4, 1956, inferentially so holds.

The majority opinion in the case at bar says the picketing here was a *secondary boycott*, but that no interstate commerce was shown to have existed so the State Court had jurisdiction. I understand that the old distinction, that actual movement of goods is necessary to make interstate commerce, has been changed both by the Wagner Act and the Taft-Hartley Act. It is not a question of whether the goods *actually moved* in interstate commerce, but whether the picketing ". . . would burden or obstruct . . . the free flow of commerce." Such is the language of the Taft-Hartley Act as contained in U. S. C. A., Title 29, Section 142. So, if picketing here be a secondary boycott, it is not necessary to allege the actual movement of goods in interstate commerce, because the jurisdiction to enjoin a *secondary boycott* is exclusively in the National Labor Relations Board, absent mass picketing or vio-

lence. The effect here would be to reverse the decree and dismiss the injunction.

II. *Product Picketing.* If we regard the picketing here involved as product picketing — and I do so regard it — then there is nothing illegal in such picketing; it comes under the right of free speech guaranteed by the Constitution. Here are some cases from State courts that recognize the legality of *product picketing*: *Goldfinger* v. *Feintuch* (N. Y. 1937), 276 N. Y. 281, 11 N. E. 2d 810; *Fortenbury* v. *Superior Court* (Calif. 1940), 106 Pac. 2d 411; *Ohio Valley Adv. Corp.* v. *Union Local* 207 (W. Va. 1953), 76 S. E. 2d 113; and *Galler* v. *Slurzberg* (N. J. 1953), 99 Atl. 2d 164.

In the last cited case (*Galler* v. *Slurzberg*) the New Jersey Court said.

> "We have here a form of secondary picketing known as product picketing — picketing directed against the product itself and not against the person selling it. Peaceful picketing of the place of business of a merchant selling the product of a manufacturer who is a party to a labor dispute, for the purpose of asking the public to refrain from purchasing such product, is permissible."

To sustain the quoted statement, thirteen cases are cited from various jurisdictions and also some textbooks and some annotations.

The majority opinion in the case at bar says that the public policy of Arkansas — as announced in *International Brotherhood* v. *Broadmoor,* ..... Ark. ....., 280 S. W. 2d 898 — applies here, and j u s t i f i e s the injunction against product picketing. I cannot agree with such conclusion of the majority. *International Brotherhood* v. *Broadmoor* involved picketing against *the employer* at a place removed from the scene of employment; and we held that the effect of such picketing was to interfere with the normal use of the highways by other persons. *Remote picketing* against the employer — as in the Broadmoor case — is entirely different from *product picketing,* as in the case at bar. Under the guise of public policy, I seriously doubt if a State court still has jurisdiction to enjoin against product picketing, absent, as here, any mass picketing or violence.

I am bound to try to follow the holdings of the United States Supreme Court; and under such holdings — as I understand them — I think the decree here should be reversed and the injunction dissolved.

s/ Ed. F. McFaddin

APPENDIX D

Constitution of the United States, Amendment 1:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Constitution of the United States, Amendment 14, Sec. 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.